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15 *Attorneys for Plaintiff*
16 *Kitsch LLC*

17
18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**
20 **WESTERN DIVISION**
21
22

23 Kitsch LLC, a California
24 company,

25 Plaintiff,

26 v.

27 CM National Inc., a California
28 corporation, Noam
Krasniansky, an individual, and
Irene Krasniansky, an
individual,

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
JUDGMENT AND DEMAND FOR
JURY TRIAL**

COMPLAINT FOR DECLARATORY JUDGMENT
AND JURY DEMAND

Plaintiff Kitsch LLC (“Kitsch”), by and through its undersigned counsel, for its Complaint against Defendants CM National Inc., Noam Krasniansky, and Irene Krasniansky (collectively, “Defendants”), states as follows:

I. PARTIES

1. Plaintiff Kitsch is a Limited Liability Company organized under the laws of California, having a principal place of business at 307 N. New Hampshire, Los Angeles, California 90004.

2. On information and belief, Defendant CM National Inc. is a corporation organized under the laws of the State of California, having a principal place of business at 1959 Blake Ave, Unit L, Los Angeles, California 90039.

3. On information and belief, Defendant Noam Krasniansky, an individual, resides at 5443 Pine Cone Rd, La Crescenta, California 91214-1461 and owns and/or is an officer of Defendant CM National Inc.

4. On information and belief, Defendant Irene Krasniansky, an individual, resides at 5443 Pine Cone Rd, La Crescenta, California 91214-1461 and owns and/or is an officer of Defendant CM National Inc.

II. JURISDICTION AND VENUE

5. As detailed below, an actual case or controversy exists between Kitsch and the Defendants as to whether Kitsch has infringed or is infringing one or more valid and enforceable claims of U.S. Design Patent No. D698,996 (“the ‘996 Design Patent”), and whether the ‘996 Design Patent is invalid.

6. The Court has subject matter jurisdiction over the claims herein pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202. This Court also has supplemental jurisdiction under 28 U.S.C. § 1367(a) over Kitsch’s state law claims

1 because they are so related to Kitsch’s federal claims that they form part of the same
2 case or controversy under Article III of the United States Constitution.

3 7. Venue and personal jurisdiction are appropriate in this Court under 28
4 U.S.C. §§ 1391(b) and 1400(b) because one or more defendants are located in this
5 District and/or because a substantial part of the events and omissions giving rise to
6 Kitsch’s claims occurred in this District.

7 **III. FACTUAL BACKGROUND**

8 **A. Kitsch and Kitsch’s Hair Coil Products**

9
10 8. Kitsch is a leading accessories manufacturer with products including,
11 hair ties, headbands, and jewelry, including rings, necklaces, earrings and other
12 fashion accessories. Today, Kitsch products can be found in over 2,000 locations
13 worldwide and has sold to large retailers such as Nordstrom, Anthropologie, Free
14 People, Kitson, Urban Outfitters, W Hotels, Francesca's and more. Kitsch
15 additionally operates an e-commerce website that serves thousands of retail
16 customers worldwide.

17 9. One of the many popular accessories Kitsch designed and manufactures
18 is a “hair coil,” which uses multiple coils to hold hair of different lengths and textures
19 in place without leaving a crease or dent.

20 10. Among other venues, Kitsch advertises and sells its hair coils through
21 the Amazon.com website.

22 11. Kitsch’s hair coils are among its best-selling products on Amazon. In
23 fact, the Kitsch hair coils have earned multiple “Amazon’s Choice” badges, earning
24 #1 and #3 positions in Amazon Hot New Releases (see Fig. 1), and #1 selling hair
25 tie/elastic, all designations Amazon reserves for popular, top-selling and highly-
26 rated goods:

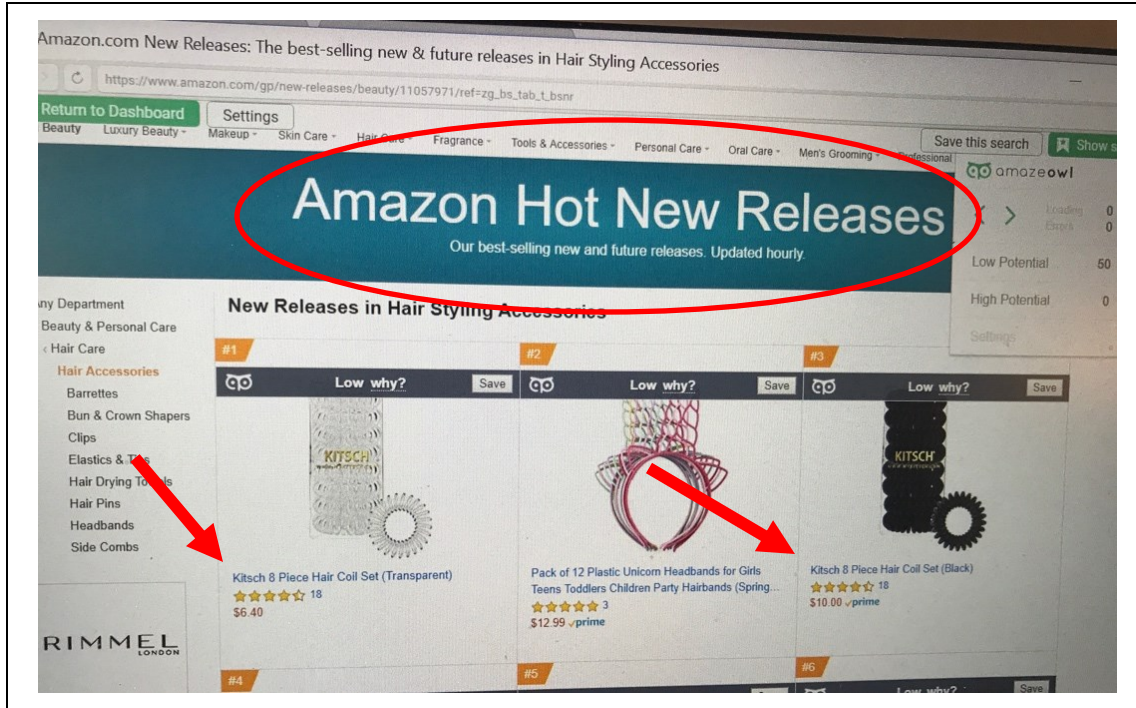


Fig. 1

B. Defendants' Wrongful Conduct

12. Defendants are competitors of Kitsch that also sell hair accessories via Amazon, including “Ooo” hair ties that purport to hold hair in place using multiple coils.

13. Defendant Noam Krasniansky is the named inventor on the ‘996 Design Patent, which was filed on April 13, 2012 and matured into a patent on February 4, 2014. *See* Exh. 1. The ‘996 Design Patent, entitled “Cylindrical Hair Band,” lists a single claim for “the ornamental design for a cylindrical hair band” that consists of 22 rings as illustrated in the patent. *Id.*

14. Unlike utility patents that protect the manner in which a product is used and functions (35 U.S.C. §101), design patents only protect the way a product looks, i.e., the ornamental design characteristics embodied in or applied to the product (35 U.S.C. §171). The scope of protection afforded under a design patent is limited to the ornamental aspects of the claimed article alone and does not extend to any of the article’s functional elements.

1 15. Additionally, a person is only entitled to patent a claimed invention that
2 was *not* “described in a printed publication, or in public use, on sale, or otherwise
3 available to the public before the effective filing date of the claimed invention....”
4 35 U.S.C. §102(a).

5 16. The ‘996 Design Patent discloses an article that is entirely functional,
6 given that the entire band is designed to hold various lengths and textures of hair.
7 *See* Exh. 1. The only ornamental design disclosed in the ‘996 Design Patent is the
8 number of coil rings, 22 according to the patent. *Id.*

9 17. In August 2017, Defendants filed a complaint with Amazon alleging
10 that certain Kitsch hair coils infringed the ‘996 Design Patent and requested that
11 Amazon remove Kitsch’s products from the website. In reliance on Defendants’
12 representations, Amazon removed multiple Kitsch hair coil products, including:

13 ASIN: B01HHGQRZG

14 ASIN: B01HHGQRZG

15 ASIN: B01G4GPPY4

16 ASIN: B07232K5Q4

17 ASIN: B0725N8HHJ

18 ASIN: B072FG5WCH

19 ASIN: B071Z6QZQ9

 ASIN: B074KTXTZ9

 ASIN: B074KTN8PY

20 18. For more than two months, Amazon precluded Kitsch from selling the
21 Kitsch hair coils targeted by Defendants, costing Kitsch a substantial amount of lost
22 revenue. Amazon did not lift the ban on Kitsch’s products until Defendants withdrew
23 the complaint in November 2017 after Kitsch pointed out that Defendants’ claim of
24 infringement was baseless for multiple reasons, including but not limited to the fact
25 that (1) even a cursory internet search reveals numerous products virtually identical
26 to the article claimed in the ‘996 Design Patent that were available for sale to the
27 public years before the ‘996 Design Patent was filed in April 2012, rendering the
28 ‘996 patent invalid, and (2) the only ornamental design disclosed in the ‘996 Design

1 Patent was the 22 coil rings spaced as indicated in the patent, whereas the Kitsch
2 hair coils are different, taking the Kitsch hair coils outside the scope of the '996
3 Design Patent. These deficiencies were pointed out directly to Defendants in a letter
4 sent on October 20, 2017. *See* Exh. 2.

5 19. Despite being aware that the Kitsch hair coils do not infringe any valid
6 claim of the '996 Design Patent, on September 7, 2018 Defendants once again issued
7 a complaint against multiple Kitsch hair coil products. Defendants again baselessly
8 claimed that the Kitsch products (the same products Defendants previously targeted)
9 infringe the '996 Design Patent. In reliance on Defendants' representations, Amazon
10 again removed multiple Kitsch hair coil products, including:

11 ASIN: B072FG5WCH
12 ASIN: B07288PNFT
13 ASIN: B077GCNMH7
14 ASIN: B07C1D79YB
15 ASIN: B07HB937L8
16 ASIN: B0725N8HHJ
17 ASIN: B07HBB3L32
18 ASIN: B07BYRG1G5
19 ASIN: B01G4GPPY4
20 ASIN: B07DF5PFLK
21 ASIN: B07FP3686J
22 ASIN: B074KVK6H7
23 ASIN: B07232K5Q4
24 ASIN: B0769MTT1Z
25 ASIN: B077GDVQL7
26 ASIN: B01HHGQRZG
27 ASIN: B01HHGQIXW
28

20. To date, Amazon continues to preclude Kitsch from selling the Kitsch
hair coils targeted by Defendants' most recent complaint. Kitsch suffers lost revenue
each day it is banned from selling its products on Amazon.

1 21. On September 24, 2018, Kitsch contacted Defendants and demanded
2 that they withdraw their baseless Amazon complaint against the Kitsch hair coil
3 products. Defendants refused.

4 22. On September 27, 2018, Defendants replied, acknowledging the risk of
5 invalidity of the '996 Design Patent, but nonetheless sent a take-down notice to
6 Amazon:

7 “At this point I would like to make some money on Amazon, but you are
8 getting in the way of this. And all my hard work, the patent and my
9 policing of the patent, is only rewarding you. If you would like you can
10 invalidate my patent and open the flood gates to thousands and thousands
11 of sellers, which will sell this product much below your price point.”

12 23. Defendants’ repeated filing of baseless complaints against Kitsch,
13 asserting claims of infringement that Defendants know or should know to be
14 completely baseless, are deliberate and willful. In an apparent effort to unlawfully
15 obtain a competitive advantage, Defendants intended to and have caused disruption
16 of Kitsch’s business and standing as an Amazon retailer.

17 24. As a direct result of Defendants’ actions, Kitsch has suffered and will
18 continue to suffer significant harm to its business, goodwill, reputation and profits.

19 25. Kitsch has no adequate remedy at law. Kitsch has suffered and will
20 continue to suffer immediate and irreparable injury, loss and damage as a result of
21 Defendants’ deliberate and wrongful actions. Kitsch will continue to suffer
22 irreparable harm unless Defendants are preliminarily and permanently enjoined by
23 this Court.
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**IV. COUNT I:
DECLARATION OF PATENT INVALIDITY**

(Alleged Against Defendant Noam Krasniansky)

26. Kitsch repeats and realleges the allegations of the preceding paragraphs as of set forth herein.

27. The claims of the '996 Patent are invalid under 35 U.S.C. §§102, 103 and 112.

28. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., Kitsch requests a declaration from the Court that the '996 Patent is invalid.

**V. COUNT II
DECLARATION OF NON-INFRINGEMENT**

(Alleged Against Defendant Noam Krasniansky)

29. Kitsch repeats and realleges the allegations of the preceding paragraphs as of set forth herein.

30. Kitsch is not infringing, and has not infringed, directly, by inducement, contributorily, or in any way, either literally or under the doctrine of equivalents, any valid and enforceable claims of the '996 Patent.

31. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., Kitsch requests a declaration from the Court that Kitsch does not and has not infringed the '996 Patent.

**VI. COUNT III
DECLARATION OF PATENT MISUSE**

(Alleged Against Defendant Noam Krasniansky)

32. Kitsch repeats and realleges the allegations of the preceding paragraphs as of set forth herein.

33. Defendant Noam Krasniansky's wrongful conduct as alleged herein has and is likely to cause relevant entities and/or consumers, including Amazon, to

1 have a false impression as to the scope of Defendant Noam Krasniansky's
2 intellectual property rights in the '996 Design Patent, including that Defendant
3 Noam Krasniansky's rights are more expansive than actually afforded under the '996
4 Design Patent and superior to Kitsch's intellectual property rights in the Kitsch hair
5 coil products Defendant Noam Krasniansky's repeatedly and falsely accuses of
6 patent infringement.

7 34. Defendant Noam Krasniansky's conduct as alleged herein was and is
8 willful and intentional, and was intended to and has enabled Defendant Noam
9 Krasniansky to wrongfully disrupt Kitsch's business and standing as an Amazon
10 retailer and gain an unlawful competitive advantage.

11 35. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et
12 seq., Kitsch requests a declaration from the Court that the '996 Patent is invalid due
13 to Defendant Noam Krasniansky's patent misuse.

14
15 **VII. COUNT IV**
16 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE**
17 **ECONOMIC ADVANTAGE**

18 **(Alleged against All Defendants)**

19 36. Kitsch repeats and realleges the allegations of the preceding paragraphs
20 as of set forth herein.

21 37. Kitsch has a valid and existing contract with Amazon that enables
22 Kitsch to advertise and sell various products, including the Kitsch hair coil products
23 at retail to consumers.

24 38. Defendants were well aware of Kitsch's economic relationship with
25 Amazon.

26 39. Defendants' aforementioned intentional acts, namely Defendants'
27 repeated filing of complaints against Kitsch asserting claims of infringement that
28 Defendants know or should know to be completely baseless, were designed to and

1 did interfere with Kitsch's economic relationship with Amazon by wrongfully
2 inducing Amazon to ban Kitsch from selling its hair coil products.

3 40. As a direct and proximate result of Defendants' conduct, Kitsch has
4 suffered irreparable harm to its business, goodwill and reputation, including
5 monetary damages of at least one million (\$1,000,000) dollars. Unless Defendants
6 are restrained from such conduct, Kitsch will continue to be irreparably harmed.

7 41. Kitsch has no adequate remedy at law that will compensate for the
8 continued and irreparable harm it will suffer if Defendants' conduct is allowed to
9 continue.

10
11 **VIII. COUNT V**
12 **INTENTIONAL INTERFERENCE WITH**
13 **CONTRACTUAL RELATIONS**
14 **(Alleged against all Defendants)**

15 42. Kitsch repeats and realleges the allegations of the preceding paragraphs
16 as of set forth herein.

17 43. Kitsch has a valid and existing contract with Amazon that enables
18 Kitsch to advertise and sell various products, including the Kitsch hair coil products
19 at retail to consumers.

20 44. Defendants were well aware of Kitsch's contractual relationship with
21 Amazon.

22 45. Defendants' aforementioned intentional acts, namely Defendants'
23 repeated filing of complaints against Kitsch asserting claims of infringement that
24 Defendants know or should know to be completely baseless, was designed to and
25 did induce a breach or disruption of Kitsch's contractual relationship with Amazon
26 by wrongfully inducing Amazon to ban Kitsch from selling its hair coil products.

27 46. As a direct and proximate result of Defendants' conduct, Kitsch has
28 suffered irreparable harm to its business, goodwill and reputation, including

1 monetary damages of at least one million (\$1,000,000) dollars. Unless Defendants
2 are restrained from such conduct, Kitsch will continue to be irreparably harmed.

3 47. Kitsch has no adequate remedy at law that will compensate for the
4 continued and irreparable harm it will suffer if Defendants' conduct is allowed to
5 continue.

6
7 **IX. COUNT VI**
8 **COMMON LAW UNFAIR COMPETITION**

9 **(Alleged against All Defendants)**

10 48. Kitsch repeats and realleges the allegations of the preceding paragraphs
11 as of set forth herein.

12 49. This claim arises under the common law of the State of California
13 relating to unfair competition.

14 50. Defendants' wrongful conduct as alleged herein has and will continue
15 to cause disruption of Kitsch's business and standing as an Amazon retailer and
16 significant harm to Kitsch's goodwill, reputation and profits.

17 51. Defendants have thus committed unfair competition under the common
18 law of the State of California.

19 52. Defendants' conduct as alleged herein was and is willful and
20 intentional.

21 53. As a direct and proximate result of Defendants' conduct, Kitsch has
22 suffered irreparable harm to its business, goodwill and reputation, including
23 monetary damages of at least one million (\$1,000,000) dollars. Unless Defendants
24 are restrained from such conduct, Kitsch will continue to be irreparably harmed.

25 54. Kitsch has no adequate remedy at law that will compensate for the
26 continued and irreparable harm it will suffer if Defendants' conduct is allowed to
27 continue.

1 55. Upon information and belief, Defendants have engaged in the wrongful
2 conduct alleged herein intentionally, maliciously, fraudulently and/or oppressively,
3 entitling Kitsch to punitive and exemplary damages in an amount to be determined
4 at trial.

5
6 **X. COUNT VII**
7 **STATUTORY UNFAIR COMPETITION –**
8 **CALIFORNIA BUS. & PROF. CODE §17200, *et seq.***
9 **(Alleged against All Defendants)**

10 56. Kitsch repeats and realleges the allegations of the preceding paragraphs
11 as of set forth herein.

12 57. By virtue of the conduct described herein, Defendants have been and
13 are engaged in “unlawful, unfair or fraudulent business act[s] or practice[s]” in
14 violation of California Business and Professions Code Section 17200, *et seq.*

15 58. As a direct and proximate result of Defendants’ conduct, Kitsch has
16 suffered irreparable harm to its business, goodwill and reputation, including
17 monetary damages of at least one million (\$1,000,000) dollars. Unless Defendants
18 are restrained from such conduct, Kitsch will continue to be irreparably harmed.

19 59. Kitsch has no adequate remedy at law that will compensate for the
20 continued and irreparable harm it will suffer if Defendants’ conduct is allowed to
21 continue.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff respectfully requests the following relief:

- 24 a. A declaration that Kitsch does not infringe and has not infringed any
25 claims of the ‘996 patent;
26 b. A declaration that the ‘996 patent is invalid under 35 U.S.C. §§102, 103
27 and 112;
28 c. A declaration that the ‘996 patent is invalid due to patent misuse;

d. A determination that the Defendants have intentionally interfered with Kitsch's prospective economic advantage, that Kitsch been damaged by such interference, and that Defendants are liable to Kitsch for such interference;

e. A determination that the Defendants have intentionally interfered with Kitsch's contractual relations, that Kitsch been damaged by such interference, and that Defendants are liable to Kitsch for such interference;

f. A determination that the Defendants have committed common law unfair competition, that Kitsch been damaged by such violations, and that Defendants are liable to Kitsch for common law unfair competition;

g. A determination that the Defendants have violated Calif. Bus. & Prof. Code §§17200 *et seq.*, that Kitsch been damaged by such violations, and that Defendants are liable to Kitsch for such violations;

h. A declaration that this is an exceptional case and award Kitsch its costs, disbursements, and reasonable attorneys' fees pursuant to 35 U.S.C. § 285;

i. Under all claims for relief, including Cal. Bus. & Prof. Code § 17203, a preliminary and permanent injunction restraining and enjoining Defendants and their officer, agents, attorneys and employees, and those acting in privity or concert with them, from committing acts of unfair competition; and

k. Such other and further relief as the Court may deem just and proper.

Dated: October 4, 2018

Respectfully submitted,

By: /s/ William E. Thomson, Jr.
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 Rebecca J. Cantor (MI Bar No. P76826)
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Attorneys for Plaintiff

JURY DEMAND

Plaintiff Kitsch LLC demands trial by jury of all issues in this action so triable.

Dated: October 4, 2018

Respectfully submitted,

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